

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF INSURANCE,
FINANCIAL INSTITUTIONS, AND
PROFESSIONAL REGISTRATION,

Petitioner,

vs.

GREGORY LEE FETTERS,

Respondent.

No. 07-0162 DI

060608244C

DECISION

The Director of Insurance, Financial Institutions, and Professional Registration (“Director”) may discipline Gregory Lee Fetters for signing insurance applications without authorization.

Procedure

The Director filed the complaint on February 6, 2007. Fetters received our notice of this case, a copy of the complaint, and our notice of the hearing date by certified mail on February 9, 2007. Fetters made no appearance at the hearing on the complaint that we convened on August 21, 2007. Legal Counsel Kevin Hall represented the Director. Fetters’ written argument was due on October 26, 2007.

The Director cites § 375.141.1(10), which allows discipline for:

[s]igning the name of another to an application for insurance . . .
without authorization[.]

When Fetters signed the name of an employee to an application for more insurance than the employee asked for, he committed conduct for which § 375.141.1(10) allows discipline.⁴

The Director cites § 375.141.1(8), which allows discipline for:

[u]sing fraudulent . . . [.]⁵ or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

Fetters generated the false applications in the conduct of business in this state. He committed such conduct with sufficient regularity as to constitute a “practice,” which means something done customarily.⁶

Fraud is an intentional perversion of truth to induce another to act in reliance upon it.⁷ Dishonesty is a lack of integrity, a disposition to defraud or deceive.⁸ It includes actions that reflect adversely on trustworthiness.⁹ Dishonesty is always a component of fraud. In documents entered into evidence, Fetters states that his conduct was a procedural error. But he also described it as a technique for up-selling. We conclude that Fetters intended AFLAC to rely on the documents to pay him more. We conclude that Fetters is subject to discipline for using a fraudulent and dishonest business practice.

⁴The Director argues that Fetters also committed forgery when he altered existing applications, but § 375.141.1(10) does not use that expansive term. It specifically limits its scope to an unauthorized signature. Neither the Director nor we can add to the statute’s plain language. *State ex rel. May Dep’t Stores Co. v. Weinstein*, 395 S.W.2d 525, 527 (Mo. App., St.L. 1965).

⁵ That statute also allows discipline for coercive business practices. To coerce is to restrain or dominate by force. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 240 (11th ed. 2004). There is no allegation or evidence of force, so coercive business practice is not grounds for discipline.

⁶MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 974 (11th ed. 2004).

⁷*Hernandez v. State Bd. of Regis’n for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997).

⁸MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY at 359.

⁹*See In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992).

Incompetence, when referring to an occupation, relates to the failure to use “the actual ability of a person to perform in that occupation”¹⁰ or the general lack of “disposition to use an otherwise sufficient professional ability.”¹¹ The definition of “trustworthy” is “worthy of confidence” or “dependable.”¹² Irresponsible means not based on sound, reasoned considerations.¹³ Fetters acted without sound consideration as to the finances of AFLAC and the Employees, which shows that he does not use and does not care to use AFLAC’s prescribed procedures, and does not deserve confidence and is not dependable. We conclude that Fetters is subject to discipline for demonstrating incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state.

Summary

Fetters is subject to discipline under § 375.141.1(8) and (10).

SO ORDERED on December 6, 2007.



JOHN J. KOPP
Commissioner

¹⁰Section 1.020(8), RSMo 2000.

¹¹*Johnson v. Missouri Bd. of Nursing Home Adm’rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004).

¹²*Stith v. Lakin*, 129 S.W.3d 912, 918 (Mo. App., S.D. 2004).

¹³WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1196 (unabr. 1986).